IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1649 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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HALLABHAI P. GAMIT - Appellant(s)
Versus
RAMESHBHAI KIKABHAI GAMIT & ORS. - Respondent(s)

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Appearance :
Shri Sunil Mehta for Shri S.K. Bukhari for Appellant(s).
Shri I.M. Pandya, Assistant Government Pleader for Respondent Nos.1-2.
Shri K.M. Parikh for Respondent No.3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/06/2007

ORAL JUDGMENT

The appellant, being aggrieved by the judgement and award dated 21st March, 1984 passed by the learned Member, Motor Accident

Claims Tribunal (Auxiliary), Surat in M.A.C.P. No.548 of 1981, rejecting the claim made by the claimant, is before this Court.

2. The short facts necessary for disposal of this appeal are that the claimant was proceeding on a cycle with his son in the vicinity of Vyara City; a truck bearing registration No. GTC-4356, driven by one Rameshbhai in rash and negligent manner, coming from the other side, dashed the cycle, as a result of which the two riders of the cycle were thrown away, the son died on the spot and the claimant also suffered injuries. The claimant filed a claim in the sum of Rs.5,000/- for the injury suffered by him and Rs.15,000/- towards the pecuniary loss suffered by him due to the death of his son.

3. The claim petition was resisted by respondent No.3 by filing the written statement contending, *inter alia*, that they are not at all liable to make the payment. The driver of the truck also submitted that it is false to say that the truck was involved in the accident.

4. In the present case, the claimant does not say that either he had seen the number of the offending vehicle or had recorded the number of the vehicle even after the accident. His case was that after the accident, he was informed by the Bit-Guard, Somabhai, that truck bearing registration No. GTC-4356 was coming from Kapura side, did not

stop at the check post and went towards Songadh. In support of the case, the claimant examined his own self, examined one Sanmukhbhai, who was declared hostile, and also examined the Police Sub Inspector, Shri Vadgama to prove that the truck number was detailed at the time of lodgement of the FIR. The opposite party also examined number of witnesses to prove that the two trucks were proceeding from Piplaidevi, via Ahwa, Pimpri, Bhanakatari, Dholera and then to Vyara. The drivers of the trucks stated before the Court that they did not pass through the road at the time of the accident.

5. The learned Counsel for the appellant submits that the moment the number of the offending vehicle is given to the Police Officer and is shown in the FIR, then, the presumption would be that such vehicle was involved in the accident.

6. In the opinion of this Court, such legal position would not be of universal application. In a given case, the injured if gives the number as an eye witness, then, the Court may rely upon it and, any other person as an eye witness if says that a particular vehicle was involved in the accident, then, the Court can rely upon it, but, if somebody comes and says that the truck number was informed to him by third party, then, the statement of the receiver of the information and the person, who registered the FIR, would not prove the facts. The statement of such

witness, who had received the information from a third party, would not be substantive evidence, but, would be corroborative evidence and if the eye witness had seen the accident and had given the number to the second party, then, the second party's statement would be corroborative statement in support of the first person in accordance with Section 6 of the Indian Evidence Act, 1872. A person cannot be an eye witness to a scene which he had not seen. If an eye witness comes and informs somebody, then, the receiver of the information can only corroborate the substantive evidence, but, in a case where the substantive evidence is not brought on record, then, the corroborative evidence would have no value.

7. Sanmukhbhai, yet another eye witness, who was examined during the course of the criminal trial, turned hostile before the Criminal Court, so also the Claims Tribunal, and he did not support the case of the claimant though he was cross examined by the claimant.

8. The other witnesses are bit-guards or foresters. They have clearly stated that from what particular route, the alleged offending vehicle had crossed.

9. If on the strength of the oral evidence available on the record, the learned Tribunal had come to the conclusion that the truck

was not involved in the accident, then, ordinarily, unless perversity is shown, this Court would not interfere in the findings recorded by the learned Tribunal.

10. Being in general agreement with the findings recorded by the learned Tribunal below, I hold that the respondents have successfully proved that the truck bearing registration No. GTC-4356 was not involved in the accident and the claimant has miserably failed in proving the involvement of the truck in the said accident.

11. I find no reason to interfere. The appeal is dismissed. No costs.

[R.S.Garg, J.]

*kamlesh**